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9 **Attorneys for Plaintiff**
10 **J & J Sports Productions, Inc.**

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **J & J Sports Productions, Inc.,**

14 **Plaintiff,**

15 **vs.**

16 **Israel Valencia Garcia, et al.**

17 **Defendant.**

18 **Case No. CV 08-0990 PVT**

19 **PLAINTIFF'S AFFIDAVIT IN**
20 **SUPPORT OF PLAINTIFF'S**
21 **APPLICATION FOR DEFAULT**
22 **JUDGMENT BY THE COURT**

23 **PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S APPLICATION**
24 **FOR DEFAULT JUDGMENT BY THE COURT**

25 **STATE OF CALIFORNIA**

)

) ss:

26 **COUNTY OF SANTA CLARA**

)

27 **I, JOSEPH M. GAGLIARDI, being duly sworn, deposes and states the**
28 **following:**

1 1. I am the President of Plaintiff, J & J SPORTS PRODUCTIONS, INC.,
2 and as such I am fully familiar with the facts, circumstances, and proceedings
3 heretofore had herein.

4 2. I make this affidavit in support of Plaintiff's request to recover statutory
5 damages, including attorneys' fees, investigative costs, and interest in the within
6 request for judgment by default.

7 3. Our company J & J Sports Productions, Inc., is a closed-circuit distributor
8 of sports and entertainment programming. Our company purchased and retains the
9 commercial exhibition licensing rights to the *Fernando Vargas v. Shane Mosley*
10 *Championship Fight Program* (hereinafter "Program") which was broadcast on
11 February 25, 2006. Our company thereafter marketed the sub-licensing (commercial
12 exhibition) rights in the Program to our company's commercial customers (i.e., casinos,
13 racetracks, bars, restaurants, and nightclubs).

14 4. Simultaneously with the advent of pay-per-view programming, we began
15 to experience a serious erosion in the sales of our own proprietary programming to our
16 commercial customers throughout the United States of America. To protect ourselves,
17 we endeavored to find out what was the basis for the erosion and determined from our
18 customers that the cause of the erosion of our customer base was the rampant piracy of
19 our broadcasts by unauthorized and unlicensed establishments (signal pirates).

20 5. In response, we embarked upon a nationwide program to police our
21 signals for the purpose of identifying and prosecuting commercial establishments
22 which pirate our programming (including the *Fernando Vargas v. Shane Mosley*
23 *Championship Fight Program*, the subject program involved in this lawsuit).

24 6. Specifically, J & J Sports Productions, Inc., retained, at considerable
25 expense, auditors and law enforcement personnel to detect and identify signal pirates.
26
27
28

1 To ensure that only illegal locations were visited by the auditors, our company
2 compiled our confidential list of customers (authorized and legal locations) who paid
3 the required license fee to broadcast the Program, and this list was distributed to
4 participating auditing and law enforcement agencies in strict confidence.

5 7. The above referenced *Program* contained several televised under-card
6 bouts, color commentary, along with the main event prizefight between Fernando
7 Vargas and Shane Mosley. As set forth within the sworn Affidavit of Gary Gravelyn,
8 it was the beginning of sixth round of the undercard bout between Calvin Brock and
9 Zuri Lawrence that was observed by Mr. Gravelyn as being *unlawfully* exhibited by
10 the establishment doing business as "La Copa" on Saturday, February 25, 2006, as at
11 no time did this establishment ever lawfully license the *Program* from our company
12 for such a purpose.
13

14 8. It is essential that I communicate to the Court that to the best of my
15 knowledge our programming is *not* and cannot be mistakenly, innocently or
16 accidentally intercepted. Some methods that a signal pirate can unlawfully intercept
17 and broadcast our programming are as follows without limitation:
18

- 19
- 20 A. The use of a "blackbox", "hotbox", or "pancake box" which is
21 purchased for a fee and when installed on a cable TV line will
22 allow for the descrambled reception of a pay-per-view broadcast,
23 or
- 24 B. The use of a "smartcard" or "test card" or "programming card"
25 which is purchased for a fee and when installed on a DSS satellite
26 receiver line will allow for the descrambled reception of a pay-per-
27 view broadcast, or
28

- 1 C. The purposeful misrepresentation of a commercial establishment as
2 a residential property to allow the fraudulent purchase of a pay-per-
3 view (or prohibited) programming at the residential rate, or
- 4 D. The use of illegal cable drop or splice from an apartment or home
5 adjacent to the commercial establishment premises (which would
6 purchase the broadcast at a residential price and divert the program
7 to the commercial establishment), and/or
- 8 E. The purchase of other illegal unencryption devices, and the
9 purchase of illegal satellite authorization codes which are readily
10 available on the internet, in trade publications, and through "word
11 of mouth".

12 9. Turning these facts to the matter before the Court I have been advised by
13 counsel that the Court has wide discretion in the awarding of statutory damages for the
14 nefarious, illegal and debilitating activities of signal pirates which are injurious to our
15 company and our lawful customers.

16 10. It is respectfully submitted to this Honorable Court that the unchecked
17 activity of signal piracy not only has resulted in our company's loss of several millions
18 of dollars of revenue, but also has a detrimental effect upon lawful residential and
19 commercial customers of cable and satellite broadcasting whose costs of service are
20 increased significantly by these illegal activities, including the depravation of tax
21 revenue to the communities where our potential customers reside, and the denial of
22 benefits such tax revenue would provide the residents of such communities.

23 11. We, at J & J Sports Productions, Inc., believe that the persistent signal
24 piracy of our programming costs our company, our customers, and their communities,
25 millions of dollars annually resulting in part, from the perceived lack of consequences
26 (including nominal or minimal damage awards by the Courts who hear our cases) for
27 such unlawful interception and exhibition by the commercial signal pirates.
28

1 12. For these reasons I ask this Honorable Court to grant the **maximum**
2 allowance for statutory damages due to the fact that such actions are *per se* intentional
3 and do not and cannot occur without the willful and intentional modification of
4 electronic equipment, the willful and fraudulent misrepresentation of a commercial
5 establishment as a residential one, the removal of cable traps or devices designed to
6 prevent such unauthorized exhibits, or other willful and/or intentional acts purposely
7 designed to obtain our programming unlawfully.
8

9 13. I am also troubled by the fact that the Courts have placed undue weight
10 upon whether the *promotion* of programming by the signal pirates (rather than the
11 *exhibition* of the programming itself) was done willfully and/or for commercial
12 benefit. I would ask the Court to recognize that the willful and purposeful acts
13 necessary to intercept and exhibit the programming precede whatever steps are, or are
14 not taken, by the pirate establishment to promote our programming to their customers.
15

16 14. I would also ask the Court to recognize that the pirates do not generally
17 advertise the fact that they intend to exhibit our programming unlawfully to the public
18 for the practical reason that they wish to avoid the unessential risk of detection. This
19 of course does not preclude the very real possibility fact that the unlawful exhibition
20 may well have been promoted by word of mouth or advertising that went undetected
21 by the auditors, to their own customers to increase their financial gain on the night our
22 fights are broadcast at their establishment.
23

24 15. In addition, it is extremely unlikely that a pirate establishment would
25 increase the costs of food or drink on the evening they broadcasting one of our
26 programs unlawfully. In my personal experience gained through many years in the
27 promotion industry, it is most uncommon that even our legal locations would employ
28 such a method to recover some of our commercial license fee back from their own

1 customers. I would point out however that since our auditors do not benchmark the
2 prices charged for food or drink at the pirate locations subsequent to conducting the
3 field surveillance on the evening our programming is broadcast, it is undetermined
4 whether the prices paid by an auditor at a pirate location on fight night are in fact less
5 than or equal to the normal prices charged by the pirate establishments.
6

7 16. In this instance, I would further request that the Court take notice that the
8 instant pirate establishment obtained a cover charge from its patrons and to view our
9 company's program. As noted within the sworn affidavit of the auditor, payment of
10 the ten dollar (\$10.00) cover charge being collected from customers was a prerequisite
11 for entry to the establishment while the exhibition of our programming was taking
12 place.

13 17. Clearly, this establishment with multiple television monitors, and a
14 physical location in a major metropolitan area, had no justification to steal our
15 programming and exhibit it for its own financial benefit, except to deny our company
16 the commercial license fee to which was rightfully entitled.
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CALIFORNIA JURAT WITH AFFIANT STATEMENT

- ☒ See Attached Document (Notary to cross out lines 1-6 below)
☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____
Signature of Document Signer No. 1 _____ Signature of Document Signer No. 2 (if any) _____

State of California

County of Santa Clara

Subscribed and sworn to (or affirmed) before me on this
26th day of June, 2008, by
Date Month Year

(1) Joseph M. Gagliardi
Name of Signer

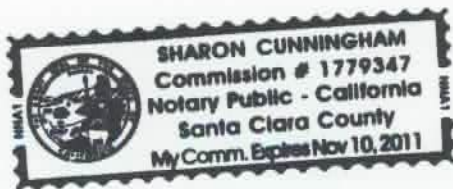
proved to me on the basis of satisfactory evidence
to be the person who appeared before me (.) (.)

(and

(2) n-a
Name of Signer

proved to me on the basis of satisfactory evidence
to be the person who appeared before me.)

Signature Sharon Cunningham
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: Plaintiff's Affidavit

Document Date: June 26, 2008 Number of Pages: 11

Signer(s) Other Than Named Above: none

La Copa February 25 2006

RIGHT THUMBPRINT OF SIGNER #1

Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2

Top of thumb here

PROOF OF SERVICE (SERVICE BY MAIL)

I declare that:

I am employed in the County of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is First Library Square, 1114 Fremont Avenue, South Pasadena, California 91030. I am readily familiar with this law firm's practice for collection and processing of correspondence/documents for mail in the ordinary course of business.

On June 30, 2008, I served:

**PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S
APPLICATION FOR DEFAULT JUDGMENT BY THE COURT**

On all parties referenced by enclosing a true copy thereof in a sealed envelope with postage prepaid and following ordinary business practices, said envelope was duly mailed and addressed to:

Israel Valencia Garcia (Defendant)
1007 Barnes Street
Mission, TX 78572

I declare under the penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct and that this declaration was executed on June 30, 2008, at South Pasadena, California.

Dated: June 30, 2008

/s/ Terry Houston
TERRY HOUSTON